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development in the future. Professor Jitta is a true cosmopolitan himself. He has a thorough acquaintance with English, French, German and other systems of law, and a perfect command of the English, French and German languages besides his native, Dutch, tongue. Whatever the language in which he expresses himself, his style is always vivacious and full of force. The present work is addressed especially to the English speaking world and is written, therefore, by the author in English.

We are grateful to Professor Jitta for having communicated his timely message to us in our own tongue. The presentation in such an attractive manner of an idealistic world order will help us all to lay aside our own prejudices and to become more earnestly desirous of participating in any movement that will bring mankind nearer to this goal.

ERNEST G. LORENZEN.

*International Law.* By Sir Frederick Smith. Fifth Edition. By Coleman Phillipson. New York, E. P. Dutton & Co. 1918. pp. 456.

Any English treatise on international law encounters the severe test of comparison with Westlake and Hall. Measured by that standard, the book under review suffers. That is perhaps not unnatural in view of the method of its evolution into its present form. Its first edition appeared in 1899 as a brief manual. The second and third editions gradually enlarged it. The fourth edition (1912) and the fifth edition, now under review, were not prepared by the original author, but by independent editors. A work which thus began as an unpretentious primer now challenges judgment by scientific standards. The wonder is that it meets the test as well as it does, a merit principally due to the excellent contributions of its present editor, Dr. Phillipson. The latter had already published some valuable treatises and extracts from these, together with much new matter of his, are found widely represented in the present text. Aside from its heterogeneous construction, the book suffers the additional handicap of having been prepared in time of war, a defect apparent throughout and at times seemingly justifying Lord Salisbury's remark, quoted indeed by the author, that "international law . . . depends generally on the prejudices of the writers of text-books."

The author who, since the publication of the book under review, has become the British Lord Chancellor under the title of Baron Birkenhead of Birkenhead, has contributed a preface which consists principally of a vigorous denunciation of Germany and a demand for the trial of her war culprits and of praise of the late Sir Samuel Evans, based largely on the latter's "profound intuition of the foundations upon which (British) maritime greatness depends"; and he compares Evans with Lord Stowell, "whose patriotism he equalled, and whose ingenuity he excelled."

With respect to the main body of the work, it may be said that the historical and informational treatment of international law is above the average. In a compendium of less than five hundred pages it is not easy to discuss the many topics within the vast field of international law, covering both their diplomatic and their legal development, without a distribution of emphasis requiring a good sense of proportion. The book meets this requirement as well as could be expected, for while retaining its character as an elementary work, it does frequently discuss at length controversial problems for which a specialist might consult a general treatise.

And yet it is because some of these problems, such as the nature of international law as law, are well discussed, that the failure to discuss others and the absence of any critical attitude toward some of the recent phenomena in international practice—it is difficult to call it "law"—excites attention and criticism.

The explanation doubtless is to be found in the fact that the book has been written from a national point of view. Its attitude toward British practice is either uncritical, apologetic, sympathetic, approving or laudatory, whereas in its consideration of the practice of foreign countries it is quite critical. It is interesting, for example, to contrast the respective descriptions of the absorption by Great Britain of Egypt (p. 57) and the annexation by Austria of Bosnia and Herzegovina (pp. 36, 147). Its condemnation of German violations of international law during the war is justly and deservedly severe. The editor points out that "the use of new weapons in warfare is not permissible unless provided for by the rules of international law; and no single nation, as an American court said, may change the law of the sea" (p. 423). Yet he seems to be nearly oblivious to the fact that the British Orders in Council changing, by municipal legislation, long established rules of international maritime law and restricting to a degree hitherto unknown the rights and privileges of neutrals, even affecting trade by neutrals between neutral countries, constitute a serious infringement upon international law, as the United States Government as a neutral clearly and repeatedly asserted. The fact that a British Prize Court sustained these Orders in Council, many of which were denominated "Reprisal Orders"—a tacit admission of their illegality—seems to justify their validity in the eyes of the editor (p. 253). Only once, in referring to that section of the Order in Council of March 11, 1915, which required every vessel bound to any neutral port carrying goods suspected of German destination or ownership to discharge them in a British port, does the editor admit that it "would not be justified otherwise than as a retaliatory measure" (p. 320). Great Britain maintained during the late war that if one belligerent "is allowed to make an attack upon the other regardless of neutral rights, his opponent must be allowed similar latitude in prosecuting the struggle" and is not "limited to the adoption of measures precisely identical with those of his opponent." This seems to be the only point on which all belligerents appeared to be agreed.

No reference has been found to the important change effected by the Order in Council shifting the burden of proof of enemy destination from the captor to the shipper, who was required to sustain the most difficult burden of proving that his goods would in human probability never reach the enemy country. Of the blacklist, no mention whatever is apparently made, and yet no measure was more potent in controlling the trade of neutrals in every part of the world. In the editor's explanation of the Orders in Council changing the rules of blockade—changes not altogether without justification—he overlooks several of the grounds of neutral protest. He might have added Sir Samuel Evans' comment in the *Hakan* that the "blockade was not a blockade at all, except for journalistic and political purposes." The reviewer might go on indefinitely pointing out what he deems lapses in the correct appreciation and evaluation by the editor of British war measures and their operation; he contents himself with expressing regret that war conditions and the editor's patriotism necessarily deprive him of the calm critical point of view which the writer of a scientific treatise ought reasonably to be expected to possess.

Perhaps it is proper to call attention to a few obvious and important inaccuracies. The editor states the effect of the decision of the Privy Council in *The Zamora* (P. C.) [1916] 2 A. C. 77, to be that "the Prize Court administers international and not municipal law, is not bound by Orders in Council," etc. (pp. 50, 192). This would be important, if true, and the contemporary popular press took pains to emphasize this independence of British Prize Courts from municipal legislation. As a matter of fact, the learned editor must be aware that the *Zamora* decision applied not to legislation or even to executive Orders in Council in execution of legislation, which always control a prize court, but solely to *prerogative* Orders in Council and even as to them the proclaimed

mitigation of Crown rights in favor of the captured vessel has been considerably impaired by the decision in *The Proton* (P. C.) [1918] A. C. 578, which in this connection is not mentioned. See (1919) 28 YALE LAW JOURNAL, 585. The effect of the decision of Point 1 in the Fisheries Arbitration is not accurately described (p. 171). While Newfoundland can enact fishing legislation for certain waters independently, its reasonableness is open to question by the United States and (should the United States request) must be passed upon by an arbitrator before it can come into force. Although the editor calls attention to the French Admiral Aube's suggestions as to bombardment of coast towns (p. 215) he does not mention the Admiral's epoch-making suggestion in the same article (*Revue des Deux Mondes*, 1882) of the attack and sinking by submarine torpedo of passenger vessels as an effective war measure. The explanation of the sinking of the German cruiser *Dresden* in Chilean territorial waters (p. 294) differs considerably from the Chilean view. The editor's apparent belief that armed merchant ships are entitled to the same immunities as unarmed ships (p. 424) is no longer entertained by many leading authorities. While a merchant vessel undoubtedly has the privilege of arming, contrary to the German view, she does thereby, it is believed, forfeit her immunity from unwarned attack by enemy war vessels. To conclude otherwise would be to give the armed ship a position of remarkable security, not attainable or to be expected in war, and to overlook the effect of numerous decisions.

Since 1918, when the book was published, many changes or additions have been engrafted on the fabric of international practice, notably by the Treaty of Versailles, and by the high sanction thereof, doubtless characterizable as "law." Many of these innovations constitute such serious departures from what we have conceived to be well settled principles, for example, those relating to the treatment of private property, or such astonishing reversions to long obsolete practice, that one's confidence in the stability of any "rule" of international law is badly shaken. The harm in this practice is more than immediate. International law like all law has been observed because mankind has by experience learned that in the long run it is better to have as nearly as possible a guide of consistency and principle in the conduct of human relations, rather than to permit expediency and passing advantage to dictate conduct and policy. Law is itself a restraint upon the strong and a protection to the weak, a guide to the doubtful and an insurer of general safety. Its ministers always have then a standard to uphold. Notwithstanding the frequency of wars, international law had in the past century grown stronger from generation to generation. That was because at the end of each war there was a renewed dedication to legal principles and a steady gain in certainty was to be noted. Now, however, some of the elemental props of the legal structure have been loosed. It has been apparently deemed profitable to throw off the restraints of law for what seems a momentary advantage of self-interest. Experience will test the wisdom of the step. When force or expediency, and not law, becomes the arbiter of human destiny, civilized society has lost its standards and the precedent is likely to be exploited.

E. M. B.